

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1095

Introduced by Jensen, 20; Byars, 30; Dickey, 18

Read first time January 7, 2000

Committee: Health and Human Services

A BILL

- 1 FOR AN ACT relating to physicians; to amend section 71-147, Revised
- 2 Statutes Supplement, 1999; to adopt the Physician
- 3 Self-Referral Act; to harmonize provisions; and to repeal
- 4 the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 17 of this act shall be known
2 and may be cited as the Physician Self-Referral Act.

3 Sec. 2. (1) The Legislature finds that:

4 (a) The referral of a patient by a physician to a health
5 care facility or health care supplier in which the physician has a
6 financial interest represents a potential conflict of interest;

7 (b) These referral practices may limit or eliminate
8 competitive alternatives in the health care services market, may
9 result in overutilization of health care services, may increase
10 costs to the health care system, and may adversely affect the
11 freedom of the patient to make the best choice of health care
12 facility or health care supplier; and

13 (c) It may, however, be appropriate for physicians to own
14 health care services and to refer patients to such health care
15 facilities and health care suppliers, as long as certain safeguards
16 are present in the arrangement.

17 (2) The purpose of the Physician Self-Referral Act is to
18 provide guidance to physicians regarding prohibited patient
19 referrals between physicians and health care facilities or health
20 care suppliers to protect the citizens of Nebraska from unnecessary
21 and costly health care expenditures.

22 Sec. 3. For purposes of the Physician Self-Referral Act,
23 the definitions found in sections 4 to 13 of this act apply.

24 Sec. 4. Community means a city or a county.

25 Sec. 5. Demonstrated need means there is no health care
26 facility or health care supplier in a community providing similar
27 services and alternative financing is not available for the
28 facility or supplier.

1 Sec. 6. Director means the Director of Regulation and
2 Licensure.

3 Sec. 7. Financial interest means a direct or indirect
4 ownership interest and includes, but is not limited to, an interest
5 held through stock, stock options, membership units, partnership
6 units, participation units, income certificates, bonds, beneficial
7 interests in trusts, and other securities and equity instruments.
8 Financial interest also includes a lease or other device by which
9 twenty-five percent or more of the rental or fee to the physician
10 or physician-owned or co-owned supplier is based on a
11 per-procedure, per-use, or per-referral charge. Indirect financial
12 interest includes holding an interest in an entity that holds an
13 interest in a health care facility or a health care supplier,
14 regardless of the number of intervening entities, and includes
15 holding a financial interest in a health care supplier which
16 provides items, services, or supplies to a health care facility to
17 which the physician makes referrals. A financial interest held by
18 an immediate family member of a physician is deemed held by the
19 physician. For purposes of this section, immediate family member
20 means the spouse, child, parent, or sibling of the physician.

21 Sec. 8. Group practice means a group of two or more
22 physicians legally organized as a partnership, professional
23 corporation, foundation, limited liability company, nonprofit
24 corporation, faculty practice plan, or similar association:

25 (1) In which each physician who is a member of the group
26 provides substantially the full range of services which the
27 physician routinely provides through the joint use of shared office
28 space, facilities, equipment, and personnel;

1 (2) For which substantially all of the services of the
2 physicians who are members of the group are provided through the
3 group and are billed in the name of the group and amounts so
4 received are treated as receipts of the group; and

5 (3) In which the overhead expenses of and the income from
6 the practice are distributed in accordance with the methods
7 previously determined on an annual basis by members of the group.

8 Sec. 9. Health care facility means any program or
9 facility licensed pursuant to sections 71-2017 to 71-2029 or any
10 other program or facility, other than a private physician's office,
11 which regularly bills patients or third parties for health care
12 items or services which it furnishes or dispenses.

13 Sec. 10. Health care supplier means a business which
14 sells, leases, or otherwise furnishes items, services, and supplies
15 for diagnosis, treatment, or mitigation of human ailments and
16 includes, but is not limited to, home medical equipment companies,
17 home oxygen suppliers, suppliers and manufacturers of prosthetic
18 and orthotic devices, and entities which furnish health care items,
19 services, and supplies to health care facilities.

20 Sec. 11. Physician means a person licensed under the
21 Uniform Licensing Law to practice medicine, medicine and surgery,
22 osteopathic medicine, or osteopathic medicine and surgery.

23 Sec. 12. Private physician's office means a place at
24 which a physician or members of a physician's group practice are
25 enrolled under the federal medicare program to practice medicine
26 under a taxpayer identification number assigned to the physician or
27 group practice, including the physician's employer, and includes
28 the physician's residence. Private physician's office does not

1 include any facility defined in section 71-2017.01. In the case of
2 a physician not enrolled in the federal medicare program, private
3 physician's office means a place where the physician or members of
4 the physician's group practice regularly provide medical services
5 and account for the revenue and expenses of the office under a
6 taxpayer identification number assigned to the physician or the
7 group practice, including the physician's employer.

8 Sec. 13. Referral or refer means a verbal or written
9 order, prescription, or care plan given or prepared on the
10 physician's authority that a patient receive (1) diagnostic or
11 therapeutic health services, either in person or through analysis
12 of patient samples, specimens, slides, or data or (2) items,
13 services, and supplies for diagnosis, treatment, or mitigation of
14 human ailments from a health care facility or a health care
15 supplier.

16 Sec. 14. (1) Except as provided in section 15 of this
17 act, a physician shall not refer a patient to a health care
18 facility or to a health care supplier in which the physician has a
19 financial interest. A physician shall not refer a patient for
20 diagnosis, treatment, or supplies to another physician outside the
21 referring physician's group practice who is expected to utilize a
22 health care facility or health care supplier in which the referring
23 physician has a financial interest for the diagnosis, treatment, or
24 supplies of such patient, unless the referring physician's interest
25 would qualify for an exemption under section 15 of this act if the
26 referring physician were to make the referral directly to the
27 health care facility or health care supplier.

28 (2) A referral in violation of this section is a

1 prohibited referral and constitutes grounds for discipline under
2 section 71-147.

3 (3) A health care facility or health care supplier shall
4 not bill anyone for services or supplies furnished pursuant to a
5 prohibited referral under this section.

6 (4) If a health care facility or health care supplier
7 collects any amount that was billed in violation of this section,
8 the health care facility or health care supplier shall refund such
9 amount on a timely basis to the payor or the individual, whichever
10 is applicable.

11 (5) Any health care facility or health care supplier that
12 presents or causes to be presented a bill or a claim for services
13 or supplies that such person knows or should know is for services
14 or supplies for which payment may not be made under subsection (3)
15 of this section, or for which a refund has not been made under
16 subsection (4) of this section, shall be subject to a civil penalty
17 of not more than five thousand dollars for each such bill or claim.
18 The civil penalty shall be imposed and collected by the Department
19 of Health and Human Services Regulation and Licensure and remitted
20 to the State Treasurer for credit to the Department of Health and
21 Human Services Regulation and Licensure Cash Fund.

22 Sec. 15. Section 14 of this act does not apply to:

23 (1) Any referral to a health care facility or a health
24 care supplier for items, services, or supplies if (a) the physician
25 or another physician in the physician's group practice personally
26 performs all or part of the medical service at the site, is present
27 and supervises nonphysician personnel in the performance of
28 clinical services at the site, or is present and supervises

1 clinical or technical personnel in the performance of technical
2 services at the site and (b) the health care facility or health
3 care supplier does not have a policy or practice of excluding or
4 withholding services from patients enrolled in the federal medicare
5 program or the medical assistance program established under
6 sections 68-1018 to 68-1025 unless the service or supply itself is
7 a noncovered service or item under such programs;

8 (2) Ownership on the same terms as are generally
9 available to the public of bonds, shares, or other securities which
10 are listed on a national, regional, or foreign exchange or are
11 traded under an automated intradealer quotation system operated by
12 the National Association of Securities Dealers or ownership of
13 shares in a regulated investment company as defined in 26 U.S.C.
14 851(a);

15 (3) Physician ownership of a health care facility or
16 health care supplier when there is a demonstrated need in the
17 community which may not be met without physician investment, if all
18 the following conditions are met:

19 (a) Individuals who are not in a position to refer
20 patients to the facility must be given a bona fide opportunity to
21 invest in the facility and must be able to invest on the same terms
22 as are offered to a physician in a position to refer;

23 (b) The terms on which investment interests are offered
24 to physicians must not be related to the past or expected future
25 volume of referrals or other business from the physicians;

26 (c) There is no requirement that any physician investor
27 make referrals to the entity or otherwise generate business as a
28 condition for becoming or remaining an investor;

1 (d) The entity must not market or furnish its items,
2 supplies, or services to referring physician investors differently
3 than to other investors;

4 (e) Neither the entity nor any other investor may loan
5 funds to or guarantee a loan for a physician in a position to refer
6 to the entity;

7 (f) The return on the physician's investment must be tied
8 to the physician's equity in the facility rather than to the volume
9 of referrals;

10 (g) Investment contracts shall not prevent physicians
11 from investing in other facilities;

12 (h) Physicians must disclose their investment interest to
13 their patients when making a referral, and patients must be given a
14 list of effective alternative facilities, if any such facilities
15 become reasonably available, must be informed that they have the
16 option to use one of the alternative facilities, and must be
17 assured that they will not be treated differently by the physician
18 if they do not choose the physician-owned facility;

19 (i) The physician's ownership interest shall be
20 disclosed, when requested, to third-party payors;

21 (j) An internal utilization review program shall be
22 established to ensure that investing physicians do not exploit
23 their patients in any way, as by inappropriate or unnecessary
24 utilization; and

25 (k) The facility shall not have a policy or practice of
26 excluding or withholding services from patients enrolled in the
27 federal medicare program or the medical assistance program
28 established under sections 68-1018 to 68-1025 unless the service or

1 item itself is a noncovered service or item under such programs;

2 (4) An investment interest in an entity licensed under
3 Chapter 44 and regulated by the Director of Insurance; and

4 (5) An investment interest acquired before January 5,
5 2000.

6 Sec. 16. A physician, health care facility, or health
7 care supplier may apply in writing with the director for an
8 exemption pursuant to section 15 of this act. The application
9 shall state the facts of the particular circumstances and
10 certifying compliance with the conditions required by such section.
11 Unless the director, the physician, the health care facility, or
12 the health care supplier requests a hearing, the director shall
13 determine whether to grant or deny the exemption within ninety days
14 after receipt of the written request. The director's decision
15 shall be a final administrative decision and may be appealed. The
16 appeal shall be in accordance with the Administrative Procedure
17 Act. Each application for an exemption under such section shall be
18 accompanied by a nonrefundable fee of one thousand dollars.

19 Sec. 17. The Department of Health and Human Services
20 Regulation and Licensure shall adopt and promulgate rules and
21 regulations necessary to implement the Physician Self-Referral Act.

22 Sec. 18. Section 71-147, Revised Statutes Supplement,
23 1999, is amended to read:

24 71-147. A license, certificate, or registration to
25 practice a profession may be denied, refused renewal, limited,
26 revoked, or suspended or have other disciplinary measures taken
27 against it in accordance with section 71-155 when the applicant,
28 licensee, certificate holder, or registrant is guilty of any of the

1 following acts or offenses:

2 (1) Fraud, forgery, or misrepresentation of material
3 facts in procuring or attempting to procure a license, certificate,
4 or registration;

5 (2) Grossly immoral or dishonorable conduct evidencing
6 unfitness or lack of proficiency sufficient to meet the standards
7 required for practice of the profession in this state;

8 (3) Habitual intoxication or active dependency on or
9 addiction to the use of alcohol or habituation or active dependency
10 on or addiction to the use of any kind of controlled substance or
11 narcotic drug or failure to comply with a treatment program or an
12 aftercare program entered into under the Licensee Assistance
13 Program established pursuant to section 71-172.01;

14 (4) Conviction of a misdemeanor or felony under state
15 law, federal law, or the law of another jurisdiction and which, if
16 committed within this state, would have constituted a misdemeanor
17 or felony under state law and which has a rational connection with
18 the applicant's, licensee's, certificate holder's, or registrant's
19 fitness or capacity to practice the profession;

20 (5) Practice of the profession (a) fraudulently, (b)
21 beyond its authorized scope, (c) with manifest incapacity, (d) with
22 gross incompetence or gross negligence, or (e) in a pattern of
23 negligent conduct. Pattern of negligent conduct shall mean a
24 continued course of negligent conduct in performing the duties of
25 the profession;

26 (6) Practice of the profession while the ability to
27 practice is impaired by alcohol, controlled substances, narcotic
28 drugs, physical disability, mental disability, or emotional

1 disability;

2 (7) Physical or mental incapacity to practice the
3 profession as evidenced by a legal adjudication or a determination
4 thereof by other lawful means;

5 (8) Permitting, aiding, or abetting the practice of a
6 profession or the performance of activities requiring a license,
7 certificate, or registration by a person not licensed, certified,
8 or registered to do so;

9 (9) Having had his or her license, certificate, or
10 registration denied, refused renewal, limited, suspended, or
11 revoked or having had such license, certificate, or registration
12 disciplined in any other manner in accordance with section 71-155
13 by another state or jurisdiction to practice the particular
14 profession involved, based upon acts by the applicant, licensee,
15 certificate holder, or registrant similar to acts described in this
16 section. A certified copy of the record of denial, refusal of
17 renewal, limitation, suspension, or revocation of a license,
18 certificate, or registration or the taking of other disciplinary
19 measures against it by another state or jurisdiction shall be
20 conclusive evidence;

21 (10) Unprofessional conduct;

22 (11) Use of untruthful or improbable statements or
23 flamboyant, exaggerated, or extravagant claims, concerning such
24 licensee's, certificate holder's, or registrant's professional
25 excellence or abilities, in advertisements;

26 (12) Conviction of fraudulent or misleading advertising
27 or conviction of a violation of the Uniform Deceptive Trade
28 Practices Act;

1 (13) Distribution of intoxicating liquors, controlled
2 substances, or drugs for any other than lawful purposes;

3 (14) Willful or repeated violations of the Uniform
4 Licensing Law or the rules and regulations of the department
5 relating to the licensee's, certificate holder's, or registrant's
6 profession, sanitation, quarantine, or school inspection;

7 (15) Unlawful invasion of the field of practice of any
8 profession mentioned in the Uniform Licensing Law which the
9 licensee, certificate holder, or registrant is not licensed,
10 certified, or registered to practice;

11 (16) Failure to comply with sections 71-604, 71-605, and
12 71-606 relating to the signing of birth and death certificates;

13 (17) Violation of the Uniform Controlled Substances Act
14 or any rules and regulations adopted pursuant to the act;

15 (18) Purchasing or receiving any prescription drug from
16 any source in violation of the Wholesale Drug Distributor Licensing
17 Act;

18 (19) Violation of the Emergency Box Drug Act;

19 (20) Violation of the Physician Self-Referral Act;

20 (21) Failure to file a report required by section 71-168;

21 ~~(21)~~ (22) Failure to disclose the information required by
22 section 71-1,314.01;

23 ~~(22)~~ (23) Failure to disclose the information required by
24 section 71-1,319.01; or

25 ~~(23)~~ (24) Failure to disclose the information required by
26 section 71-1,206.34.

27 A license, certificate, or registration to practice a
28 profession may also be refused renewal or revoked when the

1 licensee, certificate holder, or registrant is guilty of practicing
2 such profession while his or her license, certificate, or
3 registration to do so is suspended or is guilty of practicing such
4 profession in contravention of any limitation placed upon his or
5 her license, certificate, or registration.

6 This section shall not apply to revocation for nonrenewal
7 as set out in subsection (1) of section 71-149 and sections 71-110
8 and 71-161.10.

9 Sec. 19. Original section 71-147, Revised Statutes
10 Supplement, 1999, is repealed.